

## **Bar Standards Board - Director General's operational report – 22 November 2018**

### **Director General**

#### **Future Bar Training programme**

1. The FBT programme is progressing to time and budget. Once the Rules go live in 2019, the Programme Board has agreed that it will meet twice more in 2019 and meetings will be to linked to key milestones in the first phase of the programme evaluation plan so as to ensure that this phase of the programme starts off on the right track. Once this has occurred, the Programme Board is likely to then be led purely by the Executive who will continue to report progress to the Board on a regular basis.
2. I attended and spoke at the Westminster Legal Policy Forum in relation to FBT, sharing a platform with the LSB, SRA and CILEx Regulation. Roadshows in all circuits focussing on Pupillage reform have commenced and are being led by various senior staff members.

#### ***Rule change***

3. The LSB have now returned comments on our draft application. The executive is looking to make all changes to the application with a view to having the application submitted by the end of the month.

#### ***Role of the Inns***

4. The Education and Training Committee will review the MoU and resolve any outstanding policy matters at its November meeting.
5. Recent feedback from COIC suggests that further engagement with representatives of the four Inns will help resolve outstanding small points of difference. We are still working towards completing the MOU prior to the Christmas break, but there remains a risk that this may slip to January, particularly as each Inn will need to sign it off through their own governance process.

#### ***Authorisation Framework ("AF")***

6. A settled version of the AF including the evidence requirements will be published at the end of November. We will engage with existing BPTC AETOs to encourage feedback on its usability.

#### ***Review of Curriculum and Assessments***

7. A programme of workshops is underway to develop learning outcomes and common assessment criteria for locally (non-BSB) assessed subjects for the vocational component of training. These workshops are taking place throughout November and December with representatives from current BPTC providers. The output from the session will feed into the final curriculum and assessment strategy which will sit beneath the Authorisation Framework.

#### ***Authorisation Process (Digital Platform)***

8. Functional design on the end to end digital platform for applications to be authorised as an AETO is in progress. Given the likelihood of a minor time delay between the introduction of new Bar Training and the full implementation of the automated solution, an interim process

will be developed to allow applications to be received and processed in a consistent and transparent way.

### ***Fees***

9. The consultation on the fee model is underway since week beginning 19 November and will run until 13 January, with final approval to be sought from the Board in January.

### **Regulatory Operations Programme**

10. Work on the programme is progressing full steam ahead as the go-live date for RegOps is confirmed for the 1<sup>st</sup> of June 2019. Discussions are being held by the Executive to ensure that all work streams can be delivered on time without compromising the business-as-usual activities that must still take place.

### ***Centralised Assessment Team (CAT) Project***

11. The project is currently running on time.
12. The Project Team has been finalising the form which will allow users to submit information to CAT through the BSB website, and the process by which information will be considered internally. In parallel to this, consideration has also been given to what training, policies and guidance will be needed for staff, and what guidance will be needed for the front-end user. Further work has been carried out regarding headcount to ensure that appropriate staffing levels are allocated.
13. Following extensive testing of the risk assessment process, the Project Team has continued to develop the risk assessment guidance for assessors, which is coherent with the organisation's overall strategy for risk-based assessment.
14. Operational backfill is being made available to support key members of the team in carrying out work on the project.

### **CMA Programme**

#### ***Transparency Project***

15. We issued a transparency rule change consultation in mid-September, alongside detailed guidance and worked examples in specific areas of law to help respondents to the consultation understand the nature of the transparency rules we are proposing. We are now undertaking a programme of engagement to encourage responses to the consultation. We are also working on the necessary updates to the BSB's Public Access guidance and model client care letters to reflect the new transparency rules and working on the necessary updates to MyBar and the Barristers' Register.
16. A supervision programme to test compliance by the profession (from 2020, allowing for a period of bedding-in) has been developed.

### **Strategy & Policy**

17. In October, the Policy Team received 115 calls and e-mails to the Professional Standards Helpline. This brings the total number of queries this year to date to approximately 975.

## ***Public Access Training Review***

18. The development of a revised set of required outcomes for the Public Access training is complete, and an invitation to tender was issued in early October. This allows existing training providers to demonstrate how they intend to revise their current Public Access training to reflect the revised training outcomes. Any prospective new training providers are also able to demonstrate how their Public Access training proposal reflects the revised training outcomes. The tender will close in late November, following which contracts for the revised Public Access training will be awarded ready for January 2019 (the current training provider contracts expire at the end of December).

## ***Scope of practice***

19. We have finalised our assessment of the risks which might arise to clients if we were, hypothetically, to remove all scope of practice controls. This approach has allowed us to identify the difference between our assessment of each risk and the organisation's tolerance for that risk. This has supported our development of controls, whereby we target our controls at those risks which would be furthest from the organisation's tolerance.

## **Equality and Access to Justice**

20. The Head of Equality and Access to Justice attended a meeting with COIC to discuss outreach, social mobility and diversity to contribute to discussions about improving coordination across stakeholders across our shared E&D agendas.
21. The regulators E&D forum was co-ordinated and hosted by the BSB in October. The forum meets to share best practice and consider improving partnership working across the regulatory community.
22. Representing the BSB, the Head of Equality and Access to Justice delivered Equality and Diversity speeches at Kings College London Mooting Society and the European Law Students Association (ELSA) branch at Queen Mary University of London.
23. Recruitment for a Equality and Access to Justice Policy Manager has been approved by the SMT, and interviews are planned to take place in December 2018.
24. Internal support continues to be in delivering EIAs across various projects and programmes and with E&D related engagement activities across various departments.

## **Regulatory Risk**

### ***Risk Reporting***

25. At their October meeting, the GRA Committee discussed the 2<sup>nd</sup> Consolidated Risk Report, which included an assessment of the BSB's highest priority risks. Following thorough consideration, the Committee asked the Risk Team produce papers for the November GRA committee meeting, that would allow the committee to conduct "deep-dives" into the highest priority risks.
26. Separately, in October, the SMT considered a paper from the Risk Team setting-out options for individual SMT members to "own" specific regulatory risks. The SMT agreed that they will continue to have collective ownership of the Risk Index and the Risk Report, however, they agreed that individual SMT members will also own a series of specific risks. Each owner will have oversight of their risks; helping to provide further assurance in the process of evaluation, assessment and prioritisation, before the SMT take ownership of the report

ahead of it being presented to the GRA. Owners will also have oversight of future deep dive papers produced by the Risk Team.

### ***BSB Risk Assessment***

27. Assessor testing of the CAT end-to-end process, which includes the BSB Risk Assessment process, was completed in October. The testing provided valuable evidence of the ability of assessors to conduct risk assessments, allowing the Risk Team and CAT Project Team colleagues to further refine the Assessment Guidance. A paper setting out the lessons learned from testing has been produced for the November IDB / CAT Project Board.
28. The Regulatory Risk Team have also been in discussion with colleagues in PCD and in Supervision to discuss the application of the BSB Risk Assessment process more widely.

### ***Engagement with Other Regulators***

29. In addition to meeting with other legal regulators, as discussed in the last DG Report, the Risk Team also meet with risk representatives of the Financial Conduct Authority and other financial service regulators. These meetings are facilitated by the APEX member, Paul Dyer. We met again in October, having a very useful discussion of some of the practical issues of risk management, including the BSB's consideration of risk in our Scope of Practice project.

### **Research**

30. We have been working with the Risk Team to strengthen the evidence base for the Regulatory Risk Register, alongside preliminary evidence-gathering for the next version of the Risk Outlook. A new version of the Risk Register has been produced which includes a detailed evaluation of the evidence for each risk, and a summary of evidence has been produced for each of the three themes of the Risk Outlook.
31. AlphaPlus has started work on the first two stages of the Future Bar Training evaluation, covering a review of the programme objectives and current context, and the design of a process and impact evaluation. This includes qualitative research with project stakeholders, alongside a review of research, project documentation and data availability to inform the design of the evaluation itself.
32. Work continues on the CPD evaluation, including an in-depth analysis of qualitative information within the sample of CPD records marked as 'non-compliant'. The final stages of the evaluation - to understand barristers' perceptions and experiences of the new scheme - will be next, with an Invitation To Tender for the research due to be released in November.
33. Research into PCD complaints data is being conducted by the Research Team. This will analyse three years of data to investigate factors contributing to differences across gender and ethnicity in the numbers of complaints made, and the outcomes of complaints, and is a follow-up to a similar piece of research published in 2016.
34. Research on the recruitment and advertising of Pupillage has been completed, covering analysis of pupillage selection criteria at the application and interview stages, and the analysis of pupillage advertisements. The report is currently out for Peer Review, with publication expected in November.

## **Professional Conduct Department**

### ***General***

35. Over the last month, the Professional Conduct Department (PCD) has focused on business as usual in progressing cases in line with the relevant procedures and on progressing existing project work such as the Regulatory Operations. All work remains on track in terms of the Business Plan and performance continues to exceed the corporate KPI of 80% of cases completed within the service standards with a current outturn of 83.3% as at 5 November 2018.

### ***Staffing***

36. As outlined in last month's report, the PCD was recruiting for two Senior Case Officer roles, one permanent and one temporary. We have now appointed two new members of staff. The temporary cover will be provided by Jessica Holmes. Jessica joined us on 22 October. She has previously worked at the Nursing & Midwifery Council in the legal team and most recently at Blake Morgan, undertaking a variety of investigations for a number of other regulators.
37. In terms of the permanent role, Dawn Ebanks will be starting on 27 November. Dawn will be joining us from the Health & Care Professions Council where she has been working in their casework department as well as providing representation at some hearings. Prior to this Dawn worked in commercial litigation, most recently at BLM LLP.

## **Regulatory Operations Programme**

38. We are currently advertising for lay and barrister members, and a Vice Chair, of the new Independent Decision-Making Body (IDB) which will commence taking regulatory decisions from 1 June 2019.  
<https://www.barstandardsboard.org.uk/about-bar-standards-board/bar-standards-board-jobs/>  
The Chair of the Board will be appointing the first interim Chair of the IDB in the near future now that the revised Standing Orders that provide for this are in force.

### ***Training***

39. The formal training programme continues but no group training has taken place in the last month. However, we are in the process of arranging drafting training. The Operational Support Team Manager attended Freedom of Information Act training in order to enhance our internal capability to deal with enquiries given our commitment to act within the spirit of the FIOA, although we are not formally subject to its terms.

### ***Litigation***

40. The PCD is currently handling two live litigation cases. One of these is the discrimination claim remitted from the Supreme Court. There has been no further development since the last update. The other case is a Judicial Review. It is being dealt with by way of consent order, and the decision of the court is awaited.
41. Two statutory appeals arising in cases referred by the PCC to a five-person tribunal at a time when it only had the power to refer to a three-person tribunal were heard in October 2018. Both appeals were dismissed, and costs awarded against the appellant barristers.

## **Regulatory Assurance Department**

### ***Anti-Money Laundering and Counter Terrorist Financing***

42. The [Office for Professional Body Anti-Money Laundering Supervision](#) (OPBAS) visited the BSB over two days, 23-24 October 2018. They interviewed eight members of staff and assessed the BSB against the criteria set out in the OPBAS [Sourcebook](#). We expect to receive their formal findings letter 6-8 weeks after the visit. We will be asked to prepare an action plan in response to issues that they identify in the letter. Issues discussed during the visit were in line with the self-assessment that we conducted before the visit.
43. The Financial Conduct Authority have launched a consultation on the fees rates for OPBAS; <https://www.fca.org.uk/publications/consultation-papers/cp18-32-recovering-costs-office-professional-body-anti-money-laundering-supervision-opbas-proposed>. The proposed fee that would apply to the BSB is in line with what has been indicated previously and what we have budgeted. We are currently preparing our response to this consultation, which is open until 14 December 2018.
44. We have now submitted our annual supervision return to HM Treasury as required under regulation [51\(1\) of the Money Laundering Regulations](#). The return covered our activities over the period 6 April 2017 to 5 April 2018.
45. HM Treasury is currently considering transposition of the Fifth EU Money Laundering Directive. This is likely to add a requirement on the BSB to publish an annual report on supervision activity.

### ***Assuring Competence***

46. This month has seen us continue to meet stakeholders in line with our stakeholder engagement plan; in fact, we have met some organisations more than once to discuss operational detail. In particular, other legal regulators have expressed an interest in working together around assuring competence. We are drafting chaser correspondence for those organisations who have yet to respond.
47. The Youth Court advocacy video has been finalised and will shortly be published on our website and advertised to third parties.

### ***Authorisations***

48. The Authorisations Review Panel (ARP) met on 17 October and considered four applications for review. All decisions were upheld.
49. Since the last report, the APEX advisor has been consulted on two occasions, in relation to Transferring Qualified Lawyers.
50. The team continues to collate data received from the Pupillage Training Organisation survey which went live in September. The deadline for response to the survey has been extended until the end of the year.
51. Pupillage registration forms have been revised and are now online.

### ***Transitional arrangements for Pupillage Training Organisations becoming Approved Education and Training Organisations***

52. The deadline for responses has been extended until the end of the year. Responses are being risk rated as they are received to ensure that they are prioritised and assessed proportionately. The survey responses have highlighted the need to update contact

information within the Customer Relations Management (CRM) system. A data cleansing exercise is underway, with our records office, to address this issue.

## **Communications and Stakeholder Engagement**

53. Since this report was last prepared for the October Board, the following press releases and news announcements have been issued:
- 12 October: information for lawyers from the European Economic Area after Brexit;
  - 22 October: launch of consultation on our strategic priorities for 2019-22;
  - 26 October: confirmation that the Board agreed new Bar training rules (subject to LSB approval); and
  - 2 November: recruitment notice about seeking barrister and lay members for the Independent Decision-Making Body.

### ***Work in Progress***

54. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- consultation on BSB fees and charges under the new Bar training rules;
  - publication of the Authorisation Framework;
  - announcement about our new statutory powers of intervention; and
  - guidance about non-disclosure agreements and harassment.
55. The team is also working on the following projects:
- implementation of the agreed tactical communications plan to raise awareness about FBT and, subject to LSB approval, the introduction of new Bar training rules;
  - communications input into the draft of the next BSB Risk Outlook; and
  - developing the BSB website.
56. The team is running a number of Public Engagement events over the autumn. These include:
- attendance and presentations about FBT at pupillage fairs;
  - a series of FBT roadshows in the Circuits focussing on pupillage rule changes;
  - the BSB session at the Bar Conference, also focussing on pupillage rule changes; and
  - a roundtable event on 6 December for invited stakeholders to share evidence and views on our proposed risk themes and priorities for the next BSB Strategic Plan.

### ***Online and social media***

57. During October, 28,699 users visited the BSB website. At the time of writing, we have 20,800 followers on Twitter, 3,238 followers on LinkedIn and 558 followers on Facebook.

## **Corporate Services**

### ***Governance***

58. The Bar Council approved changes to the BSB's Constitution on 3 November 2018. Amendments are substantially to: allow the Board itself flexibility to determine the number of members of the Board (a minimum of 11 and maximum of 15, always retaining the lay majority of one so retaining the current proportion of barrister involvement); specify that minimum quorum requirements for Board meetings should be with a lay majority; streamline the panels and processes for appointment and reappointment of the Chair and members of the Board; and allow two terms of up to four years each for members of the Board, rather than the current terms of three years.

59. In anticipation of changes to its Constitution, the Board has agreed to trial reducing the number of its members, by not replacing the vacancy for a barrister member that arose during the year, and not replacing the next vacancy for a lay member whenever that should arise. We are continuing to recruit for a barrister member, to replace the vacancy that arises when Justine Davidge concludes her second term at the end of the year.
60. The Board approved changes to its Standing Orders to take effect from 5 November. Amendments are to bring the Independent Decision-Making Body (IDB) into existence, with a provisional clause allowing the BSB Chair to appoint the interim Chair of the IDB, so that we can commence recruitment of the IDB Vice Chair and members before the IDB gains its powers on 1 June 2019.
61. The second biannual update session with members of the Advisory Pool of Experts is scheduled for late November. The two annual updates often have a dual purpose, for us to utilise the combined expertise of members at an early stage of our work, and to update members on our major activities to provide context for their contributions to pieces of work throughout the year.

**Vanessa Davies**  
**Director General**  
**November 2018**